

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF ERIC L.)	
HORNE AND VALY M. STEVERLYNCK FOR A LIMITED-)	FINDINGS OF FACT,
PURPOSE AQUACULTURE LEASE LOCATED IN THE)	CONCLUSIONS OF LAW
SHEEPSCOT RIVER, BETWEEN CUNNINGHAM ISLAND))	AND DECISION
AND LEHMAN ISLAND, NEWCASTLE, LINCOLN)	
COUNTY, MAINE)	

On January 10, 2002, Eric L. Horne and Valy M. Steverlynck of Freeport, Maine applied for a limited-purpose (experimental) commercial type, aquaculture lease totaling 2 acres in the coastal waters of the State of Maine, located in the Sheepscot River, between Cunningham Island and Lehman Island in Newcastle, Lincoln County, Maine. The applicants requested the lease for a term of three (3) years for the purpose of cultivating American oysters (Crassostrea virginica), surf clams (Spisula solidissima), European oysters (Ostrea edulis), and quahogs (Mercenaria mercenaria) using bottom culture techniques. The application was accepted as complete on February 27, 2002. A public hearing on this application was held on December 19, 2002 at 7:00 p.m. in Damariscotta.

Approval of limited-purpose aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that a limited-purpose lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that the project will not unreasonably interfere with the ingress and egress of riparian owners; navigation; fishing or other uses of the area, taking into consideration the number and density of aquaculture leases; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

Evidence Introduced Concerning the Nature
and Impact of the Proposed Lease

The evidentiary record before the Department regarding this lease application includes the Department file (Exhibit 1), including the application (Exhibit 2) and the Department site report (Exhibit 3), and the record of the December 19, 2002 public hearing. At the public hearing, testimony was given by the applicants, Eric Horne and Valy Steverlynck, the Department's Aquaculture Environmental Coordinator, Jon Lewis, and two members of the public, Lucy Harrington and Mike Herz.

According to the application and the testimony by the applicants, the proposed experimental lease is sought to determine the commercial viability of raising American oysters, European oysters, surf clams, and quahogs. The applicants request a lease site totaling two (2) acres and a lease term of three (3) years. The applicants testified that the proposed lease location was moved south of the site originally contained in the application and the dimensions of the site were changed. The move was due to the proximity of the original lease site to a dock and the dimensions were changed in order for the site to have only four corners and therefore only four corner buoy markers. The applicants indicated that the coordinates in the Department's site report are the correct coordinates for the lease site.

The proposed lease activities would consist of the direct planting of shellfish on the bottom of the lease area. Market-size shellfish will be harvested by dragging with a small skiff-drawn drag. The applicants testified that they will be present at the lease site approximately one to two days in November or December of the first year of the lease to plant the shellfish. Following a grow-out period of approximately one and one half to two years, they will be on site one or two half days per week from March to November for harvest. Up to one million shellfish will be grown on the proposed lease site. The proposed lease site would be accessed by boat from the Wiscasset Town Ramp. The applicants testified that all seed shellfish would be obtained from the hatcheries of Muscongus Bay Aquaculture in Bremen, Maine and Marshall

Point Sea Farm in Port Clyde, Maine. The seed will be taken to the applicants' nursery in Freeport, Maine, and then will be planted on the bottom of the lease site when they reach the appropriate size. The applicants expressed a concern for the potential of the spread of disease from their lease site to the natural oysters in the nearby conservation area and the potential for the natural oysters to spread disease to their oysters at the lease site, and testified that they will test the oysters for MSX, Dermo, and Juvenile Oyster Disease before moving the oysters from the nursery in Freeport to the lease site.

In accordance with Department regulations, Chapter 2.64(2), the applicants provided an environmental characterization of the proposed lease area. The applicants testified that the river bottom at the proposed lease site consists of gravel with some larger stones. The site is located in the middle of a pronounced channel, with tidal mudflats to the west and a ledge shoreline to the east. The depths at low and high tide are estimated to be 6 and 10 feet respectively. Local flora includes kelp and seaweed, and local fauna includes green crabs, rock crabs, and some live, wild oysters. The current flow is estimated to be an average of one knot and flows in a north/south direction. The applicants testified that they chose this particular location because of the strong current, the mixture of fresh and salt water and the hard bottom. Additionally, the applicants testified that because of the hard bottom, dragging will not have a negative impact on the area. The applicants testified that because the site has a hard bottom, any matter that is disturbed will settle quickly. They also stated that there is very little vegetation on the lease site that would be disturbed by dragging.

The applicants provided a statement by Ronald Aho of the Department of Marine Resources regarding the existing uses of the proposed lease site. Mr. Aho stated that lobster fishermen, recreational boaters and sport fishermen use the proposed lease area. He also stated that there are nearby mudflats and intertidal areas used by shell-fishermen and worm harvesters, and that some boat traffic is expected with these activities. Mr. Aho further indicated that the lease site is approximately two and one half miles from a natural population of American

oysters in the Marsh River that are protected by a state conservation closure and the applicants should take care to assure the shellfish on their site are disease and parasite free.

The applicants indicated that there is boat traffic in the area from sport fishermen, recreational boaters, kayakers and lobstermen. According to the applicants, the lease activities on the site will not interfere with any boat traffic. The applicants testified that the only structures on the site would be four buoys marking the corners of the lease site. The applicants further stated that their skiff-drawn drag is three and one half feet wide and therefore dragging on the site will not impede navigation. They testified that they would agree to a lease condition requiring them to stop dragging to give way to anyone who needs to pass if they are in the way.

Additionally, the applicants would not exclude lobster fishing or recreational fishing and boating from the site. The applicants testified that they would agree to a lease condition that would allow such uses on the lease area. However, the applicants requested that dragging by others be prohibited within the lease boundaries.

In response to concerns by the public regarding poaching, the applicants testified that they were aware of both oyster farming in the area and poaching of the protected oysters in the conservation area. The applicants further stated that they have contacted Marine Patrol and have lobbied before the legislature requesting more funding for Marine Patrol.

The Department's Aquaculture Environmental Coordinator (AEC) and his assistant conducted a site visit at the proposed lease area on July 29, 2002. The AEC created a site report summarizing the information obtained during the site visit and provided testimony regarding the site report at the public hearing. According to the report and the AEC's testimony, the proposed site is located approximately 39 feet east of Lehman Island and abuts the shore of Cunningham Island to the east. The proposed site is located in shallow water depths ranging approximately from 5 to 12 feet at low tide. There would be a maximum of 63.24 feet of distance between proposed lease and the shore at mean low water. The applicants will access the proposed lease from the Wiscasset Town Ramp located 3.1 miles southwest of the proposed lease site.

According to the AEC, the only dock within 1,000 feet of the proposed site is located on the western shore of Cunningham Island, approximately 187.96 feet from the proposed site. No moorings were observed within the area of the proposed lease site. The AEC testified that because the applicants do not intend to use any structures, the proposed lease activities are not expected to interfere with riparian ingress and egress.

Vessel traffic in the area, according to the AEC, is expected to be limited to lobster boats, small skiffs, canoes and kayaks. The AEC contacted Marine Patrol Officer Danny White regarding the lease application. MPO White indicated that vessel traffic in the area is comprised primarily of recreational vessels less than 20-21 feet in length. According to the AEC, the proposed activities will not interfere with navigation because the lease site will not contain any floating or suspended aquaculture gear. The AEC also testified that dragging in the lease area will not interfere with navigation. He stated that the drag and vessel are small and that even when the site is being dragged there will be over 100 feet of channel in which to navigate.

The AEC testified that limited commercial fishing is expected in the area of the proposed lease. On July 29, 2002, no lobster trap buoys or evidence of fishing was observed between Lehman and Cunningham Islands. According to MPO White, there is very limited lobster fishing in the area of the proposed lease site. MPO White was aware of one individual fishing recreational traps in the area.

According to the AEC's report, clam and/or worm digging likely occurs on the mud flats to the west of the proposed lease site on the eastern shore of Lehman Island. MPO White indicated that there is clam and worm digging in the area, but that most of the digging in the area takes place off Chase's Point, which is located west of Cunningham Island, and on the north side of Cunningham Island. MPO White further indicated that a large number of wild American oysters are found in the area of the proposed lease site. He is aware of sporadic oyster harvest in the area. However, he indicated that most oyster harvest in the Sheepscot River is in the depuration only areas from Chase's Point north. The AEC testified that there are other aquaculture leases in the Sheepscot River. Two sites are located in a salt pond near Mason

Station and two sites are located near the railroad bridge. Additionally, according to the AEC, recreational fishing for striped bass also occurs in the lease area.

According to the AEC's report the proposed lease is located in an area classified as open for the harvest of shellfish by the Department's Water Quality Division. Also, according to the report the proposed lease site is not located in an "Essential or Significant Wildlife Habitat" regulated by the Department of Inland Fisheries and Wildlife (IF&W).

The AEC testified regarding the potential for the spread of disease to the oysters in the conservation area. He suggested a lease condition that would require the applicants to work with the Department's pathologist and provide documentation to the Department of fish health inspection and testing. The applicants stated that they would agree to such a condition on the lease.

With regard to the impact of dragging on the lease site, the AEC testified that the sediment will settle quickly and will be carried approximately 100 feet. He indicated that the lease site is a good candidate for a study on the effects of dragging. In his opinion, dragging the lease site will not have an impact due to the hard bottom. The applicants stated that they would be willing to participate in a study on the effects of dragging.

Lucy Harrington, a riparian owner, testified at the hearing. Ms. Harrington is the owner of the dock located 187 feet from the lease site. She testified that she is concerned about the security of her property due to an increase in criminal activity. She testified she is concerned about poaching. She also indicated a concern for toxins in the river and referred to a study being conducted by Friends of the Coast on the toxins in the river. She further testified that she observes mud in the river turned up by her boat. She testified that she hasn't observed any lobster traps in the area and that there are four to five recreational boaters in the area on a regular basis.

Mike Herz, representing the Sheepscot Valley Conservation Association, also provided testimony at the public hearing. He stated that his concerns were shared by members of the Association that live on the river. He testified that he is concerned about the natural population of

oysters in the conservation area. He agrees that there should be a lease condition requiring the testing of the oysters for disease. He submitted a map which depicts the conservation area. (Exhibit 4). He stated he is also concerned about poachers.

Findings of Fact

The proposed lease is located approximately 39 feet east of Lehman Island and abuts Cunningham Island to the east at mean low water. Access to the proposed lease would be by boat from the Wiscasset Boat Ramp. There is one dock located approximately 187.96 feet from the proposed lease site. There are no moorings located in the area of the proposed lease site. No use of riparian land was requested or required. There will be no structures located on the lease site, aside from four corner buoys marking the boundaries. Based on this evidence, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

The proposed lease is located in shallow water depths of approximately 5 to 12 feet, approximately 39 to 63 feet from the shore at mean low water. Navigation in the area consists of vessels associated with sport fishing and lobster fishing, as well as recreational boats and kayaks. The lease area will be used for bottom culture only and will therefore not contain any gear that would pose a navigable hazard. The drag used by the applicants is only three and one half feet wide. Therefore, it will not create a navigable hazard. Additionally, the applicants have agreed to a lease condition that would require them to stop dragging if anyone needs to pass through if they are in the way. Based on the foregoing, I find that the proposed lease will not unreasonably interfere with navigation.

Fishing in the area of the proposed lease site consists of recreational fishing for striped bass, lobster fishing and clamming and worming. The nearest existing aquaculture lease is located down river. The area of the proposed lease is classified as "open" for the harvest of shellfish. The applicants will allow lobster fishing and recreational fishing on the lease site. I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

Existing flora and fauna observed at the proposed site consists of kelp, seaweed, green crabs, rock crabs and oysters. The current flow is estimated to be an average of one knot. Due

to the hard bottom surface, dragging the lease site will not impact local flora and fauna. Additionally, the applicants will test the shellfish for disease prior to planting them on the lease site. The testing is sufficient to ensure the leasing activities will not impact the natural population of oysters located in the conservation area in the Marsh River. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

All seed shellfish will be obtained from the hatcheries of Muscongus Bay Aquaculture in Bremen, Maine and Marshall Point Sea Farm in Port Clyde, Maine. Based on this evidence, I find that there is an available source of American oysters, European oysters, surf clams, and quahogs.

The proposed lease site is located over 3 miles from the nearest public boat landing located in Wiscasset. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities.

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna, provided that the applicants test the shellfish for disease prior to planting the shellfish on the lease site;
5. The applicant has demonstrated that there is an available source of American oysters, European oysters, surf clams, and quahogs to be cultured for the lease site; and

6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

Accordingly, the evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072-A.

Decision

Based on the foregoing, the Commissioner grants the applicants' requested limited-purpose commercial lease of 2.0 acres to the applicants from the date of this decision for the purpose of cultivating American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), surf clams (*Spisula solidissima*), and quahogs (*Mercenaria mercenaria*) using bottom culture techniques. The applicant shall pay the State of Maine rent in the amount of \$50.00 per acre per year. The applicant shall post a bond or establish an escrow in the amount of \$5,000 conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations. A limited-purpose lease for commercial aquaculture research and development conveys only those rights specified in the lease.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

- (1) navigation, lobster fishing and recreational boating and fishing shall be allowed on the lease;
- (2) dragging in the lease area is prohibited by persons other than the lease holder;
- (3) the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80;

(4) the applicants shall test the shellfish for disease prior to planting the shellfish on the lease site; the applicants shall work with the Department pathologist in order to determine which tests will be required and will provide the Department with documentation of the results of the tests;

(5) when dragging at the lease site, the applicants shall cease dragging activities if they are impeding navigation, in order to allow passage through the lease area.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources